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## Memorandum on The Blocking Charge Rule, 1978

Warren C. Ogden

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## Memorandum on The Blocking Charge Rule, 1978

### Abstract

Memo about a National Labor Relations Board general policy on pending unfair labor practice charges including the case of Schlachter Meat Company, August 25, 1978.

MEMORANDUM

*campaign*

TO: All Consultants  
FROM: Warren Ogden  
DATE: August 25, 1978  
RE: The Blocking Charge Rule

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The National Labor Relations Board has a settled general policy that it will not hold elections while unresolved unfair labor practice charges are pending unless the charging party files a request to proceed with the election despite the pending charge. The case which initially stated the Board's policy was Schlachter Meat Company, 100 NLRB No. 184, 30 LRRM 1418 (1952). In that case the Board stated that:

"To provide and safeguard the laboratory in which an election experiment may be conducted, the Board has administratively established certain standards. Thus it has been the Board's established policy, based on experience, not to conduct representation elections while unresolved unfair labor practices are pending. . ."

If the pending charges involve the alleged discriminatory discharge of employees and a request to proceed is filed, the discharges are allowed to cast challenged and segregated ballots. Rutledge Paper Products, 91 NLRB No. 115, 26 LRRM 1544 (1950). Thus,

if an election petition has been filed, and the union files a charge alleging an unlawful discharge, the union is in a position to request to proceed with an election despite the pendency of the charge and have the alleged discriminatee able to vote, at least on a segregated ballot. However, it should be noted that it is not in every case that the union will request to proceed, nor is it certain that only the union will have filed charges.

In certain special circumstances, the Board will order an election even though there are pending unfair labor practices and there has been no request to proceed. For instance, in Columbia Pictures Corporation, 81 NLRB No. 207, 23 LRRM 1504 (1949), the Board ordered an immediate election despite the pendency of unfair labor practice charges where the representation petitions had been pending nearly two years and having been delayed by reason of two prior unfair labor practice charges subsequently dismissed. The Board, in that case, pointed out that the unfair labor practice charges were filed only four days prior to the hearing and the basic pattern of conduct indicated that no further delay in the election was justified.

In certain types of cases, the Board will not recognize a request to proceed. In a case involving an employer's alleged unlawful domination or assistance of a union the Board normally will not conduct an election despite a request to proceed. See Panda Terminals, Inc., 161 NLRB No. 103, 63 LRRM 1419 (1966). The Board will also often refuse to proceed despite a request where there is an allegation that the employer has unlawfully refused to bargain with the union.

In considering the applications of the Blocking Charge Rule to individual election situations, the consultant or attorney should keep in mind that there is no standing requirement under the Act for the filing of unfair labor practice charges. In other words, it is possible for an employer to file charges in effect against himself. It is also possible for a union to file charges against itself. But, normally, the parties file charges against each other. Thus, it is incumbent upon the consultant to examine to the best of his ability what promises, statements or threats have been made by a union in its attempt to solicit cards or otherwise conduct its campaign. Such activities on the part of the

union may have given cause to the possibility of filing charges against the union. The effect of such charges, in addition to triggering the Board's traditional responses, is the implementation of the Blocking Charge Rule.

Quite often, an employer has an internal committee which could be regarded as an unlawful union. In such a situation, the employer, if it has not recognized and signed a contract with the internal committee, will be desirous of resolving the status of that organization prior to the conduct of an election. In such a case, the internal committee must become an intervenor in the election hearing. This is so because the Board will not entertain an 8(a)(2) charge filed by the employer against himself for fostering and assisting an unlawful labor organization unless that labor organization is a party to the pending representation case. Pullman Industries, Inc., 159 NLRB No. 44, 62 LRRM 1273 (1966). It is, of course, theoretically possible to stall an election indefinitely by filing unfair labor practice charges. However, the Board will proceed to entertain the election petition once it has rendered the decision

in the case. If the matter has been found to have merit and has been litigated up through the Board, the Board will not wait for a decision of the Circuit Court of Appeals prior to running the election. Accordingly, the filing of unfair labor practice charges will not indefinitely postpone the conduct of an election. But the Blocking Charge Rule, and its application, is an important thing for a consultant or an attorney to take into account when faced with an election petition.